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May 17, 2000

VIA HAND DELIVERY

Magalie Roman Salas, Secretary
 Federal Communications Commission
 Office of the Secretary
 445 12th Street, SW
 Room TW-204B
 Washington, D.C. 20554

RECEIVED

MAY 17 2000

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

RE: Implementation of the Subscriber Changes Provisions of the Telecommunications Act of 1996, CC Docket No. 94-129, MGC Communications, Inc. - Petition for Expedited Waiver of MGC Communications, Inc.

Dear Ms. Salas:

Enclosed are an original and four copies, plus two additional public copies, of MGC Communications, Inc.'s (MGC) Petition for Expedited Waiver of the Commission's authorization and verification rules 47 C.F.R. §§64.1100-64.1190, as adopted in the above referenced proceeding.

A duplicate original copy of this letter is enclosed, please date stamp this copy as acknowledgment of its receipt and return it. Questions regarding this filing may be directed to the undersigned at the telephone number listed above.

Respectfully submitted,

Sana D. Coleman
 Counsel for MGC Communications, Inc.

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 List **ABCDE**

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the)
Subscriber Changes Provisions)
of the Telecommunications Act of 1996)
)
Policies and Rules concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)
)
MGC COMMUNICATIONS, INC.)
Petition for Expedited Waiver)

CC Docket No. 94-129

To: The Chief, Common Carrier Bureau

PETITION FOR EXPEDITED WAIVER

MGC Communications, Inc. ("MGC")^{1/}, pursuant to Section 1.3 of the rules and regulations of the Federal Communications Commission ("FCC" or the "Commission"), 47 C.F.R. § 1.3, respectfully requests a limited waiver of the FCC's authorization and verification rules, 47 C.F.R. §§ 64.1100-64.1190,^{2/} to the extent necessary, if at all, to transfer ownership and control of Primary Network Holdings, Inc. ("Primary") to MGC. In addition to other subsidiaries, Primary holds two wholly-owned operating subsidiaries, BroadSpan Communications, Inc. d/b/a/ Primary Network Communications ("Primary Network"), which wholly owns Harvest Telecom,

^{1/} MGC Communications, Inc. provides telecommunications services in the majority of jurisdictions where it is certificated as "Mpower Communications Corp."

^{2/} Pursuant to 47 C.F.R. §64.1150, before submitting a preferred carrier change, carriers must either: (1) obtain the subscriber's written and signed authorization; (2) obtain confirmation from the subscriber via a toll-free number provided for the exclusive purposes of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.

Inc. ("Harvest").^{3/} Customers of Primary Network and Harvest will continue to be served by their respective carriers following the transfer of ownership and control of Primary to MGC. MGC respectfully requests expedited treatment of this petition to allow the parties to effectuate the proposed transfer of ownership and control on or before **June 15, 2000**.

BACKGROUND

MGC has entered into an agreement to acquire Primary and all of its subsidiaries, including its operating subsidiaries Primary Network and Harvest, by assuming Primary's existing indebtedness and issuing a portion of its authorized but unissued common stock to Primary's shareholders. Details of the proposed acquisition were submitted to the Commission concurrent with this filing on May 17, 2000 in a separate request for Commission consent to the transfer of control of the international Section 214 authorization held by Primary. To effect this transfer of control, for tax and business reasons, a wholly-owned subsidiary, Mpower Merger Sub, Inc. ("Mpower Sub") has been formed to merge into Primary. The proposed MGC acquisition of Primary will be transparent to the existing customers of MGC, Primary Network, and Harvest, as the customers of each will continue to receive service from their same respective carrier following the transfer of ownership and control.

Prior to this transaction, MGC and Primary Network (or Harvest in applicable jurisdictions) will jointly send letters to subscribers to notify them of MGC's anticipated

^{3/} Harvest Telecom, Inc. is certificated solely in the state of Oklahoma to provide competitive local exchange services. For purposes of this Petition for Expedited Waiver, any reference to customer assurances given to Primary Network customers shall also apply to customers receiving service from Harvest. Accordingly, Harvest customers will receive the same pre and post migration notices provided herewith as Exhibits 1 and 2.

acquisition of Primary Network (or Harvest in applicable jurisdictions). Presubscribed customers that have not already given their consent to a carrier change will be informed that: (1) their long distance terms, conditions and rates will not change as a result of the transfer of ownership and control; (2) their right to remain a customer of Primary Network (or Harvest in applicable jurisdictions) or to select another carrier is unaffected by the transfer of ownership and control; (3) they can direct any questions to a toll-free customer service number; (4) no charges, such as LEC-assessed PIC change charges, will appear on the their bill as a result of the migration; (5) and that, despite the change in ownership and control, their services will continue to be provided by their existing carrier. A sample copy of the pre-migration customer notification letter is attached hereto as Exhibit 1.

Once MGC receives the necessary regulatory approvals for the migration and completes the transfer, MGC and Primary Network (or Harvest in applicable jurisdictions) intend to send a second letter to affected customers notifying them of the completed transaction. A sample copy of the post-migration letter is attached hereto as Exhibit 2.

DISCUSSION

Under Sections 64.1000-64.1190 of the Commission's rules, 47 C.F.R §§ 64.1000-64.1190, carriers are required to verify all preferred carrier change orders before executing such changes. The Commission can grant a waiver, however, if special circumstances exist and where the waiver will serve the public interest.^{4/} To the extent, if any, a transfer of control of the holding company of Primary Network and Harvest constitutes a preferred carrier change order, MGC requests a waiver because requiring MGC to obtain verification from each of the thousands of subscribers currently served by these companies would impede the smooth transfer of control of

^{4/} *WAIT Radio*, 418 F.2d at 1159.

the holding company and disrupt their ability to continue to receive quality telecommunications services. In light of the size of Primary Network's and Harvest's combined customer base, MGC is unlikely to be able to affirmatively contact, solicit and obtain appropriate verification from each subscriber on a timely basis. Absent a waiver, any subscriber that MGC is unable to contact before acquiring ownership and control of Primary Network and Harvest risks temporarily not receiving service from MGC and also risks being charged higher rates by another carrier.

As mentioned above, the Primary Network and Harvest subscribers from whom verification would otherwise be required will receive notification of the change in the ownership and control of the service providers both before and after the transfer of ownership and control and they will also be informed that the transfer will not affect their right to continue to receive service from Primary Network (or Harvest in applicable jurisdictions) or to select an alternative provider. Customer inquiries regarding the impact of the migration of their service and the change in providers will be addressed through a toll-free number established to handle such inquiries. The toll free number will also appear in the customer notifications. Primary Network (and Harvest in applicable jurisdictions) will remain responsible for addressing and resolving any customer complaints or other customer issues arising from the service provided prior to the transfer date to ensure that the rights of the subscribers are adequately protected. The Commission should find that the circumstances warranting grant of a waiver to MGC in this case are analogous to those recently found by the Commission to justify waiver of its rules for other carriers.^{5/}

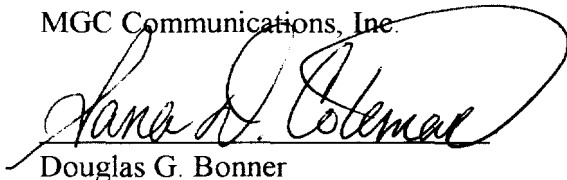
^{5/} See e.g., *Sprint Communications Company, Request for Waiver*, DA 00-620, (rel. March 17, 2000); *Iowa Telecommunications Services, Request for Waiver*, DA 99-2777, (rel. Dec. 21, 1999); *Conversent Communications, LLC, Request for Waiver*, DA 99-2776 (rel. Dec. 21, 1999); *Excel Telecommunications, Inc., et al., Request for Waiver*, DA 99-1992 (rel. Sept. 29, 1999).

Accordingly, MGC respectfully requests the Commission to waive its authorization and verification rules set forth above. Expedited action is requested to the extent necessary to allow the parties to effectuate the proposed transfer of ownership and control on or before **June 15, 2000**.

Respectfully submitted,

MGC Communications, Inc.

By:

A handwritten signature in black ink, appearing to read "Sana D. Coleman", is written over a horizontal line.

Douglas G. Bonner

Sana D. Coleman

Arent Fox Kintner Plotkin & Kahn PLLC

1050 Connecticut Avenue, NW

Washington, D.C. 20036-5339

(202) 857-6000

Counsel for MGC Communications, Inc.

Dated: May 17, 2000

**Sample Customer Notification - Pre-Migration
(To be Modified for Harvest Telecom, Inc. In Applicable Jurisdictions)**

WELCOME

As you may have already heard, MGC Communications, Inc. d/b/a Mpower Communications Corp. ("Mpower") is acquiring ownership and control of BroadSpan Communications, Inc. d/b/a/ Primary Network Communications, Inc. ("Primary Network"). Mpower is excited to have you as a customer and is looking forward to serving your communications needs. We provide high quality, technologically advanced, affordable telecommunications services with a personal touch to business and residential customers nationwide.

Although the ownership and control of Primary Network will change, your service will not be affected.

As President and CEO of Mpower and President of Primary Network, we want to personally take this opportunity to assure you that once the transfer of control is completed on or about June 15, 2000, your existing service will not change as a result of the transfer. No charges will appear on your bill as a result of this transfer of ownership and control. This transfer is subject to the approval of the Federal Communications Commission and may also be subject to the approval of the state regulatory commission in the state where you reside. This transfer will not affect your right to continue to receive service from Primary Network or to select an alternative provider. However, we want you to know that Primary Network will continue to provide you with the same high level of service which you have come to expect.

You will be notified when the transfer of ownership and control has occurred in a follow up letter.

If you have any questions, please call our customer service line at 1-877-741-1277. Customer Service Representatives are standing by to assist you.

Very truly yours,

Rolla P. Huff
President and CEO
Mpower Communications Corp.

Richard S. Phillips
President
Primary Network Communications, Inc.

**Sample Customer Notification - Post-Migration
(To be Modified for Harvest Telecom, Inc. In Applicable Jurisdictions)**

WELCOME

MGC Communications, Inc. d/b/a Mpower Communications Corp. ("Mpower") is delighted to be able to serve your communications needs! On June 15, 2000, MGC acquired ownership and control of BroadSpan Communications, Inc. d/b/a Primary Network Communications, Inc. ("Primary Network").

Although the ownership and control of Primary Network has changed, your current service will continue to be provided by Primary Network.

As President and CEO of Mpower and President of Primary Network, we would like to take this opportunity to assure you that, although the ownership and control of Primary Network has changed, your telecommunication services have not changed as a result of the transfer. Also, no charges should have appeared on your bill as a result of the transfer of ownership and control of Primary Network to Mpower. The transfer of the ownership and control from Primary Network to Mpower was approved by the Federal Communications Commission and also may have been approved by the regulatory commission in the state where you reside.

While this transfer will not affect your right to continue to receive service from Primary Network or to select an alternative provider, as President and CEO of Mpower and President of Primary Network, we want you to know that Primary Network will continue to provide you with the same high level of service which you have come to expect.

If you have any questions, please call our customer service line at 1-877-741-1277. Customer Service Representatives are standing by to assist you.

Very truly yours,

Rolla P. Huff
President and CEO
Mpower Communications Corp.

Richard S. Phillips
President
Primary Network Communications, Inc.